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SENATE BILL 658

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Roman M. Maes III

AN ACT

RELATING TO INSURANCE; CHANGING THE NONFORFEITURE INTEREST RATE
ON DEFERRED ANNUITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-20-33 NMSA 1978 (being Laws 1984,
Chapter 127, Section 398) is amended to read:

"59A-20-33. STANDARD NONFORFEITURE LAW - INDIVIDUAL
DEFERRED ANNUITIES. --

A. This section shall not apply to any reinsurance,
group annuity purchased under a retirement plan or plan of
deferred compensation established or maintained by an employer
(including a partnership or sole proprietorship) or by an
employee organization, or by both, other than a plan providing
individual retirement accounts or individual retirement
annuities under Section 408 of the Internal Revenue Code of

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1 1986, as now or hereafter amended, premium deposit fund,
2 variable annuity, investment annuity, immediate annuity, any
3 deferred annuity contract after annuity payments have commenced
4 or reversionary annuity, nor to any contract [~~which~~] that shall
5 be delivered outside this state through an agent or other
6 representative of the insurer issuing the contract.

7 B. In the case of contracts issued on or after the
8 operative date of this section as defined in Subsection K of
9 this section, no contract of annuity, except as stated in
10 Subsection A of this section, shall be delivered or issued for
11 delivery in this state unless it contains in substance the
12 following provisions, or corresponding provisions [~~which~~] that
13 in the opinion of the superintendent are at least as favorable
14 to the contractholder, upon cessation of payment of
15 considerations under the contract:

16 (1) that upon cessation of payment of
17 considerations under a contract, the insurer will grant a paid-
18 up annuity benefit on a plan stipulated in the contract of such
19 value as is specified in [~~Subsection~~] Subsections D, E, F, G
20 and I of this section;

21 (2) if a contract provided for a lump sum
22 settlement at maturity, or at any other time, that upon
23 surrender of the contract at or prior to the commencement of
24 any annuity payments, the insurer will pay in lieu of any paid-
25 up annuity benefit a cash surrender benefit of such amount as

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1 is specified in Subsections D, E, G and I of this section. The
2 insurer shall reserve the right to defer the payment of such
3 cash surrender benefit for a period of six months after demand
4 therefor with surrender of the contract;

5 (3) a statement of the mortality table, if
6 any, and interest rates used in calculating any minimum paid-up
7 annuity, cash surrender or death benefits that are guaranteed
8 under the contract, together with sufficient information to
9 determine the amounts of such benefits; and

10 (4) a statement that any paid-up annuity, cash
11 surrender or death benefits that may be available under the
12 contract are not less than the minimum benefits required by any
13 statute of the state in which the contract is delivered and an
14 explanation of the manner in which such benefits are altered by
15 the existence of any additional amounts credited by the insurer
16 to the contract, any indebtedness to the insurer on the
17 contract or any prior withdrawals from or partial surrenders of
18 the contract.

19 Notwithstanding the requirements of this section, any
20 deferred annuity contract may provide that if no considerations
21 have been received under a contract for a period of two full
22 years and the portion of the paid-up annuity benefit at
23 maturity on the plan stipulated in the contract arising from
24 considerations paid prior to such period would be less than
25 twenty dollars [~~(\$20)~~] (\$20.00) monthly, the insurer may at its

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1 option terminate such contract by payment in cash of the then
2 present value of such portion of the paid-up annuity benefit,
3 calculated on the basis of the mortality table, if any, and
4 interest rate specified in the contract for determining the
5 paid-up annuity benefit, and by such payment shall be relieved
6 of any further obligation under such contract.

7 C. The minimum values as specified in Subsections D,
8 E, F, G and I of this section of any paid-up annuity, cash
9 surrender or death benefits available under an annuity contract
10 shall be based upon minimum nonforfeiture amounts as defined in
11 this section.

12 (1) With respect to contracts providing for
13 flexible considerations, the minimum nonforfeiture amount at
14 any time at or prior to the commencement of any annuity
15 payments shall be equal to an accumulation up to such time at a
16 rate of interest of three percent per annum of percentages of
17 the net considerations (as hereinafter defined) paid prior to
18 such time, decreased by the sum of (i) any prior withdrawals
19 from or partial surrenders of the contract accumulated at a
20 rate of interest of three percent per annum and (ii) the amount
21 of any indebtedness to the insurer on the contract, including
22 interest due and accrued, and increased by any existing
23 additional amounts credited by the insurer to the contract.

24 For the period from July 1, 2003 to July 1, 2005, the rate of
25 interest provided for in this paragraph shall be one and one-

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1 half percent.

2 The net considerations for a given contract year used to
3 define the minimum nonforfeiture amount shall be an amount not
4 less than zero and shall be equal to the corresponding gross
5 considerations credited to the contract during that contract
6 year less an annual contract charge of thirty dollars [~~(\$30)~~
7 (\$30.00) and less a collection charge of one dollar twenty-five
8 cents (\$1.25) per consideration credited to the contract during
9 that contract year. The percentages of net considerations
10 shall be sixty-five percent of the net consideration for the
11 first contract year and eighty-seven and one-half percent of
12 the net considerations for the second and later contract years.
13 Notwithstanding the provisions of the preceding sentence, the
14 percentage shall be sixty-five percent of the portion of the
15 total net consideration for any renewal contract year which
16 exceeds by not more than two times the sum of those portions of
17 the net considerations in all prior contract years for which
18 the percentage was sixty-five percent.

19 (2) With respect to contracts providing for
20 fixed scheduled considerations, minimum nonforfeiture amounts
21 shall be calculated on the assumption that considerations are
22 paid annually in advance and shall be defined as for contracts
23 with flexible considerations which are paid annually with two
24 exceptions:

25 (a) the portion of the net consideration for

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1 the first contract year to be accumulated shall be the sum of
2 sixty-five percent of the net consideration for the first
3 contract year plus twenty-two and one-half percent of the
4 excess of the net consideration for the first contract year
5 over the lesser of the net considerations for the second and
6 third contract years; and

7 (b) the annual contract charge shall be the
8 lesser of (i) thirty dollars [~~(\$30)~~] (\$30.00) or (ii) ten
9 percent of the gross annual consideration.

10 (3) With respect to contracts providing for a
11 single consideration, ~~minimum~~ nonforfeiture amounts shall be
12 defined as for contracts with flexible considerations except
13 that the percentage of net consideration used to determine the
14 ~~minimum~~ nonforfeiture amount shall be equal to ninety percent
15 and the net consideration shall be the gross consideration less
16 a contract charge of seventy-five dollars [~~(\$75)~~] (\$75.00).

17 D. Any paid-up annuity benefit available under a
18 contract shall be such that its present value on the date
19 annuity payments are to commence is at least equal to the
20 ~~minimum~~ nonforfeiture amount on that date. Such present value
21 shall be computed using the mortality table, if any, and the
22 interest rate specified in the contract for determining the
23 ~~minimum~~ paid-up annuity benefits guaranteed in the contract.

24 E. For contracts [~~which~~] that provide cash surrender
25 benefits, such cash surrender benefits available prior to

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1 maturity shall not be less than the present value as of the
2 date of surrender of that portion of the maturity value of the
3 paid-up annuity benefit [~~which~~] that would be provided under
4 the contract at maturity arising from considerations paid prior
5 to the time of cash surrender reduced by the amount appropriate
6 to reflect any prior withdrawals from or partial surrenders of
7 the contract, such present value being calculated on the basis
8 of an interest rate not more than one percent higher than the
9 interest rate specified in the contract for accumulating the
10 net considerations to determine such maturity value, decreased
11 by the amount of any indebtedness to the insurer on the
12 contract, including interest due and accrued, and increased by
13 any existing additional amounts credited by the insurer to the
14 contract. In no event shall any cash surrender benefit be less
15 than the minimum nonforfeiture amount at that time. The death
16 benefit under such contracts shall be at least equal to the
17 cash surrender benefit.

18 F. For contracts [~~which~~] that do not provide cash
19 surrender benefits, the present value of any paid-up annuity
20 benefit available as a nonforfeiture option at any time prior
21 to maturity shall not be less than the present value of that
22 portion of the maturity value of the paid-up annuity benefit
23 provided under the contract arising from considerations paid
24 prior to the time the contract is surrendered in exchange for,
25 or changed to, a deferred paid-up annuity, such present value

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1 being calculated for the period prior to the maturity date on
2 the basis of the interest rate specified in the contract for
3 accumulating the net considerations to determine such maturity
4 value, and increased by any existing additional amounts
5 credited by the insurer to the contract. For contracts [~~which~~]
6 that do not provide any death benefits prior to the
7 commencement of any annuity payments, such present values shall
8 be calculated on the bases of such interest rate and the
9 mortality table specified in the contract for determining the
10 maturity value of the paid-up annuity benefit. However, in no
11 event shall the present value of a paid-up annuity benefit be
12 less than the minimum nonforfeiture amount at that time.

13 G. For the purpose of determining the benefits
14 calculated under Subsections E and F of this section, in the
15 case of annuity contracts under which an election may be made
16 to have annuity payments commence at optional maturity dates,
17 the maturity date shall be deemed to be the latest date for
18 which election shall be permitted by the contract, but shall
19 not be deemed to be later than the anniversary of the contract
20 next following the annuitant's seventieth birthday or the tenth
21 anniversary of the contract, whichever is later.

22 H. Any contract [~~which~~] that does not provide cash
23 surrender benefits or does not provide death benefits at least
24 equal to the minimum nonforfeiture amount prior to the
25 commencement of any annuity payments shall include a statement

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1 in a prominent place in the contract that such benefits are not
2 provided.

3 I. Any paid-up annuity, cash surrender or death
4 benefits available at any time, other than on the contract
5 anniversary under any contract with fixed scheduled
6 considerations, shall be calculated with allowance for the
7 lapse of time and the payment of any scheduled considerations
8 beyond the beginning of the contract year in which cessation of
9 payment of considerations under the contract occurs.

10 J. For any contract [~~which~~] that provides, within the
11 same contract by rider or supplemental contract provision, both
12 annuity benefits and life insurance benefits that are in excess
13 of the greater of cash surrender benefits or a return of the
14 gross considerations with interest, the ~~minimum~~ nonforfeiture
15 benefits shall be equal to the sum of the ~~minimum~~ nonforfeiture
16 benefits for the annuity portion and the ~~minimum~~ nonforfeiture
17 benefits, if any, for the life insurance portion computed as if
18 each portion were a separate contract. Notwithstanding the
19 provisions of Subsections D, E, F, G and I of this section,
20 additional benefits payable (a) in the event of total and
21 permanent disability, (b) as reversionary annuity or deferred
22 reversionary annuity benefits, or (c) as other policy benefits
23 additional to life insurance, endowment and annuity benefits,
24 and considerations for all such additional benefits, shall be
25 disregarded in ascertaining the ~~minimum~~ nonforfeiture amounts,

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1 paid-up annuity, cash surrender and death benefits that may be
2 required by this section. The inclusion of such additional
3 benefits shall not be required in any paid-up benefits, unless
4 such additional benefits separately would require minimum
5 nonforfeiture amounts, paid-up annuity, cash surrender and
6 death benefits.

7 K. After July 1, 1977, any insurer may file with the
8 superintendent a written notice of its election to comply with
9 the provisions of this section after a specified date before
10 July 1, 1979. After the filing of such notice, then upon such
11 specified date, which shall be the operative date of this
12 section for such insurer, this section shall become operative
13 with respect to annuity contracts thereafter issued by such
14 insurer. If an insurer makes no such election, the operative
15 date of this section for such insurer shall be July 1, 1979. "